

**CORPORATE INTEGRITY AGREEMENT  
BETWEEN THE  
OFFICE OF INSPECTOR GENERAL  
OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
BETHPHAGE**

**I. PREAMBLE**

Bethphage hereby enters into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to promote compliance by its subsidiaries and affiliates; its officers, directors and employees; and its contractors and agents engaged to bill/submit reimbursement claims, and all other individuals responsible for the provision, marketing or documentation of items or services reimbursable by Federal health care programs, or in the preparation of claims, reports or other requests for reimbursement for such items or services ("Covered Persons") with the statutes, regulations and written directives of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))("Federal health care program requirements"). Contemporaneously with this CIA, Bethphage is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement. Bethphage is a non-profit entity which provides a variety of services to individuals with disabilities in thirteen states.

**II. TERM OF THE CIA**

The period of the compliance obligations assumed by Bethphage under this CIA shall be 3 years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA shall be the date on which the final signatory of this CIA executes this CIA.

Sections VII, VIII, IX, X and XI shall remain in effect until OIG has completed its review of the final annual report and any additional materials submitted by Bethphage pursuant to OIG's request.

### III. CORPORATE INTEGRITY OBLIGATIONS

Bethphage hereby agrees to establish a Compliance Program that includes the following elements:

#### A. Compliance Officer and Committee.

1. *Compliance Officer.* Within 90 days after the effective date of this CIA, Bethphage shall appoint an individual to serve as its Compliance Officer. The Compliance Officer shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with Federal health care program requirements. The Compliance Officer shall be a member of senior management of Bethphage, shall make periodic (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of Bethphage, and shall be authorized to report on such matters to the Board of Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Bethphage as well as for any reporting obligations created under this CIA.

Any changes in the identity or position description of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA, must be reported to OIG, in writing, within 15 days of such a change.

#### B. Written Standards.

1. *Code of Conduct.* Within 120 days of the effective date of this CIA, Bethphage shall establish a Code of Conduct. The Code of Conduct shall be distributed to all Covered Persons within 120 days of the effective date of this CIA. Bethphage shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. Bethphage's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims and/or cost reports consistent with such requirements;

- b. Bethphage's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Bethphage's own Policies and Procedures as implemented pursuant to section III.B (including the requirements of this CIA);
- c. the requirement that all of Bethphage's Covered Persons shall be expected to report to the Compliance Officer or other individual designated by the Bethphage suspected violations of any Federal health care program requirements or of Bethphage's own Policies and Procedures;
- d. the possible consequences to both Bethphage and Covered Persons of failure to comply with all Federal health care program requirements and with Bethphage's own Policies and Procedures or of failure to report such non-compliance; and
- e. the right of all individuals to use the Confidential Disclosure Program described in section III.E, and Bethphage's commitment to maintain confidentiality, as appropriate, and non-retaliation with respect to disclosures.

Within 120 days of the effective date of the CIA, each Covered Person shall certify, in writing, that he or she has received, read, understood, and will abide by Bethphage's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within two weeks after becoming a Covered Person or within 120 days of the effective date of the CIA, whichever is later.

Bethphage shall annually review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such a review. Any such revised Code of Conduct shall be distributed within 30 days of finalizing such changes. Covered Persons shall certify that they have received, read, understood and will abide by the revised Code of Conduct within 30 days of the finalization of such revisions.

*2. Policies and Procedures.* Within 120 days of the effective date of this CIA, Bethphage shall implement written Policies and Procedures regarding the operation of Bethphage's compliance program and its compliance with Federal health care program requirements. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the Code of Conduct identified in section III.B.1;
- b. the proper submission of cost reports under Federal health care program requirements focusing on the requirements related to self-insurance funds, costs allocation, and travel expenses.

The Policies and Procedures shall be available to OIG, upon request.

Within 120 days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be distributed to all individuals whose job functions are related to those Policies and Procedures. Appropriate and knowledgeable staff should be available to explain the Policies and Procedures.

At least annually (and more frequently if appropriate), Bethphage shall assess and update as necessary the Policies and Procedures. Within 30 days of the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all individuals whose job functions are related to those Policies and Procedures.

#### C. Training and Education.

1. *General Training.* Within 120 days of the effective date of this CIA, Bethphage shall provide at least two hours of general training to each Covered Person. This training shall explain Bethphage's:

- a. CIA requirements; and ✓
- b. Compliance Program (including the Code of Conduct and the Policies and Procedures as they pertain to general compliance issues). ✓

All training materials shall be made available to OIG, upon request.

New Covered Persons shall receive the general training described above within 30 days of becoming a Covered Person or within 120 days after the effective date of this CIA, whichever is later. After receiving the initial training described above, each Covered Person shall receive at least one hour of general training annually.

2. *Specific Training.* Within 120 days of the effective date of this CIA, each Covered Person who is involved in the preparation or submission of cost reports for reimbursement from any Federal health care program (hereinafter referred to as “Relevant Covered Persons”) shall receive at least 4 hours of specific training in addition to the general training required above. This specific training shall include a discussion of:

- a. the submission of accurate cost reports to Federal health care programs;
- b. policies, procedures and other requirements applicable to the submission of cost reports;
- c. the personal obligation of each individual involved in the cost reporting process to ensure that such cost reports are accurate;
- d. applicable cost reporting statutes, regulations, and program requirements and directives;
- e. the legal sanctions for improper cost reports; and
- f. examples of proper and improper cost reporting practices.

All training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Relevant Covered Persons shall receive this training within 30 days of the beginning of their employment or becoming Relevant Covered Persons or within 120 days of the effective date of this CIA, whichever is later. A Bethphage employee who has completed the specific training shall review a new Relevant Covered Person’s work, to the extent that the work relates to the preparation or submission of cost reports for reimbursement from any Federal health care program, until such time as the new Relevant Covered Person completes applicable training.

After receiving the initial training described in this section, every Relevant Covered Person shall receive at least 2 hours of specific training annually.

3. *Certification.* Each Covered Person or Relevant Covered Person who is required to attend training shall certify, in writing, that he or she has received the required

training. The certification shall specify the type of training received and the date received. The Compliance Officer (or his or her designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

D. Review Procedures.

1. *General Description.*

a. Retention of Independent Review Organization. Within 120 days of the effective date of this CIA, Bethphage shall retain an entity (or entities), such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization" or "IRO"), to perform review engagements to assist Bethphage in evaluating its cost reporting practices and its compliance obligations pursuant to this CIA and the Settlement Agreement. Each Independent Review Organization retained by Bethphage shall have expertise in cost reporting and other requirements of the particular section of the health care industry pertaining to this CIA and in the general requirements of the Federal health care program(s) from which Bethphage seeks reimbursement.

b. Types of Engagements. The Independent Review Organization(s) shall conduct two separate engagements. One engagement shall address Bethphage's cost reporting to the Federal health care programs ("Cost Reporting Engagement"). The second engagement shall address Bethphage's compliance with the obligations assumed under this CIA and the Settlement Agreement ("Compliance Engagement").

c. Frequency of Cost Reporting and Compliance Engagements. The Cost Reporting Engagement shall be performed annually and shall cover each of the following 3 periods: (1) the first period beginning with the effective date of this CIA and ending on June 30, 2001; (2) the second period beginning July 1, 2001 and ending June 30, 2002; and (3) the third period beginning July 1, 2002 and ending June 30, 2003. The IRO(s) shall perform all components of each annual Cost Reporting Engagement. The Compliance Engagement shall be

performed by the IRO for the first one-year period beginning with the effective date of this CIA and ending on June 30, 2001.

d. Retention of Records. The IRO and Bethphage shall retain and make available to the OIG upon request all work papers, supporting documentation, correspondence, and draft reports related to the engagements.

2. *Cost Reporting Engagement.* The Cost Reporting Engagement shall consist of the following:

a. Systems Review. The IRO shall review Bethphage's cost report preparation process for those States where cost reports submitted by Bethphage are utilized by the respective States to determine Bethphage's reimbursement ("Systems Review"). As of the effective date of the CIA, these States are Nebraska, Iowa, Indiana and Kansas. For each Systems Review the IRO shall set forth the identity of the applicable States. The Systems Review shall consist of a thorough review Bethphage's cost report, cost statement, information statement and payment request preparation process relating to any and all costs submitted to Federal health care programs (including, but not limited to, the steps Bethphage takes to ensure that the proper information is being recorded on submissions to Federal health care programs and safeguards to ensure that only proper costs and dollar amounts are being submitted for reimbursement to such programs).

b. Cost Report Review. The IRO shall perform a review of a random sample of 20% of all cost reports filed by Bethphage covered by the Systems Review set out in section III.D.2.a of this CIA in the period being audited. The sample must be selected through random numbers. The IRO shall review the sample of cost reports to assess whether the cost reports are being properly submitted to Federal health care programs, including focusing on the following issues: cost allocations, self-insurance funds, and travel expenses.

c. **Cost Reporting Engagement Report.** The IRO shall prepare a report based upon the cost reporting engagement. The Report shall include the IRO's findings and supporting rationale regarding (i) the strengths and weaknesses in Bethphage's cost report, cost statement, information statement and payment request preparation process relating to any and all costs submitted to Federal health care programs covered by the Systems Review set out in section III.D.2.a of this CIA in the period being audited; (ii) any recommendations the IRO may have to improve any of these systems, operations, and processes; and (iii) whether Bethphage is submitting accurate and proper cost reports to Federal health care programs covered by the Systems Review set out in section III.D.2.a of this CIA in the period being audited

### *3. Compliance Engagement.*

a. **Compliance Review.** The IRO shall conduct a review of Bethphage's compliance activities ("Compliance Review"). The Compliance Review shall consist of a review of Bethphage's compliance with the obligations set forth in each section of this CIA, and a review of Bethphage's compliance with certain provisions of the Settlement Agreement.

i. **CIA Obligations Review.** The IRO shall evaluate Bethphage's compliance with the obligations set forth in each section of this CIA.

ii. **Unallowable Costs Review.** The IRO shall determine whether Bethphage has complied with its obligation not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from the United States, or any State Medicaid program. This unallowable cost analysis shall include, but not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Bethphage or any of its



subsidiaries, and to request, and agree, that such cost reports, cost statements, information reports or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. In making this determination, the IRO may need to review cost reports and/or financial statements from the year of the Settlement Agreement, as well as from previous years.

b. **Compliance Review Report.** The IRO shall prepare a report based upon the Compliance Review performed (the “Compliance Review Report”). The Compliance Review Report shall include:

- i. the IRO’s findings, supporting rationale, and a summary of such findings and rationale regarding Bethphage’s compliance with the terms of each section of the CIA, as applicable; and
- ii. the IRO’s findings and supporting rationale regarding whether Bethphage has complied with its obligation not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from such payor

4. *Validation Review.* In the event the OIG has reason to believe that: (a) Bethphage's Cost Reporting or Compliance Engagement fails to conform to the requirements of this CIA or (b) the findings are inaccurate, the OIG may, at its sole discretion, conduct its own review to determine whether the Cost Reporting and Compliance Engagement comply with the requirements of the CIA and/or the findings are inaccurate. Bethphage agrees to pay for the reasonable cost of any such review performed by the OIG or any of its designated agents so long as it is initiated before one year after the final report is submitted. Prior to proceeding with such a review, the OIG shall notify Bethphage of its intent to do so and its reasons for believing such a review is necessary, and shall in good faith attempt to resolve any Engagement issues without proceeding with such a review. However, it shall remain in the sole discretion of the OIG to proceed with a review as described in this paragraph.

#### E. Confidential Disclosure Program.

Within 120 days after the effective date of this CIA, Bethphage shall establish a Confidential Disclosure Program, which must include a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Bethphage's policies, practices or procedures with respect to a Federal health care program, believed by the individual to be a potential violation of criminal, civil or administrative law. Bethphage shall publicize the existence of the confidential disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communications. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Bethphage shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or his or her designee) shall maintain a confidential disclosure log, which shall include a record and summary of each disclosure received, the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The confidential disclosure log shall be available to OIG, upon request.

#### F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (a) is currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense related to the provision of health care items or services, but has not yet been excluded, debarred or otherwise declared ineligible.

2. *Screening Requirements.* Bethphage shall not hire or engage as contractors any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Bethphage shall screen all prospective employees and prospective contractors prior to engaging their services by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.hhs.gov/oig>) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within 120 days of the effective date of this CIA, Bethphage shall review its list of current employees and contractors against the Exclusion Lists. Thereafter, Bethphage shall review the list annually. In addition, Bethphage shall require employees and contractors to disclose immediately any debarment, exclusion or other event that makes the employee an Ineligible Person.

If Bethphage has notice that an employee or contractor has become an Ineligible Person, Bethphage shall remove such person from responsibility for, or involvement with, Bethphage's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Bethphage has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, the Bethphage shall take all appropriate actions to ensure that the responsibilities of that employee or contractor have not and shall not adversely affect the quality of care rendered to any beneficiary, patient or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within 30 days of discovery, Bethphage shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Bethphage has committed a crime or has

engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Bethphage shall also provide written notice to OIG within 30 days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

#### H. Reporting.

##### 1. *Overpayments*

*a. Definition of Overpayments.* For purposes of this CIA, an “overpayment” shall mean the amount of money Bethphage has received in excess of the amount due and payable under any Federal health care program requirements. Bethphage may not subtract any underpayments for purposes of determining the amount of relevant “overpayments.”

*b. Reporting of Overpayments.* If, at any time, Bethphage identifies or learns of any overpayments, Bethphage shall notify the payor (e.g., Medicare fiscal intermediary or carrier) and repay any identified overpayments within 30 days of discovery and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. Notification and repayment to the contractor should be done in accordance with the contractor policies, and for Medicare contractors, must include the information contained on the Overpayment Refund Form, provided as Appendix B to this CIA.

##### 2. *Material Deficiencies.*

*a. Definition of Material Deficiency.* For purposes of this CIA, a “Material Deficiency” means anything that involves:

- (i) a substantial overpayment; or
- (ii) a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws

applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Material Deficiency may be the result of an isolated event or a series of occurrences.

*b. Reporting of Material Deficiencies.* If Bethphage determines that there is a Material Deficiency, Bethphage shall notify OIG, in writing, within 30 days of making the determination that the Material Deficiency exists. The report to the OIG shall include the following information:

(i) If the Material Deficiency results in an overpayment, the report to the OIG shall be made at the same time as the notification to the payor required in section III.H.1, and shall include all of the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid/refunded;

(ii) a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

(iii) a description of Bethphage's actions taken to correct the Material Deficiency; and

(iv) any further steps Bethphage plans to take to address the Material Deficiency and prevent it from recurring.

#### **IV. NEW BUSINESS UNITS OR LOCATIONS**

In the event that, after the effective date of this CIA, Bethphage changes locations or purchases or establishes new business units related to the furnishing of items or services that may be reimbursed by Federal health care programs, Bethphage shall notify OIG of this fact as soon as possible, but no later than within 30 days of the date of change of location, purchase or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding contractor's name and address that has issued each Federal health care program provider number. All Covered Persons at such locations shall be subject to the applicable requirements in this CIA (e.g., completing certifications and undergoing training).

#### **V. IMPLEMENTATION AND ANNUAL REPORTS**

A. Implementation Report. Within 150 days after the effective date of this CIA, Bethphage shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section III.A;
2. a copy of Bethphage's Code of Conduct required by section III.B.1;
3. the summary of the Policies and Procedures required by section III.B.2;
4. a description of the training required by section III.C, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;
5. a certification by the Compliance Officer that:
  - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all appropriate Covered Persons;

b. all Covered Persons have completed the Code of Conduct certification required by section III.B.1; and

c. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C.;

The documentation supporting this certification shall be available to OIG, upon request.

6. a description of the Confidential Disclosure Program required by section III.E;

7. the identity of the IRO(s) and the proposed start and completion dates of the first annual review;

8. a summary of personnel actions taken pursuant to section III.F.;

9. a list of all of Bethphage's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s) and the contractor's name and address that issued each provider identification number;

10. to the extent not already furnished to OIG, or if modified, a description of Bethphage's corporate structure, including identification of any parent and sister companies, subsidiaries and their respective lines of business; and

11. the certification required by section V.C.

B. Annual Reports. Bethphage shall submit to OIG Annual Reports with respect to the status of and findings regarding of Bethphage's compliance activities for each of the three one-year periods defined in section III.D.1.c. (The one-year period covered by each Annual Report shall be referred to as "the Reporting Period").

Each Annual Report shall include:

1. any change in the identity or position description of the Compliance Officer described in section III.A;
2. a certification by the Compliance Officer that:
  - a. all Covered Persons have completed the annual Code of Conduct certification required by section III.B.1;
  - b. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C;
  - c. Bethphage has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; and (ii) not to charge to or otherwise seek payment from Federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (iii) to identify and adjust any past charges or claims for unallowable costs;
  - d. identify the States where cost reports submitted by Bethphage are utilized by the respective States to determine Bethphage's reimbursement and are thus covered under the Cost Reporting Engagement as described in section III.D.

The documentation supporting this certification shall be available to OIG, upon request.

3. a summary of any significant changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);
4. a description of the training required by section III.C conducted during the Reporting Period, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;



5. a complete copy of all reports prepared pursuant to the IRO's cost reporting and compliance engagements, including a copy of the methodology used, along with a copy of the IRO's engagement letter;
6. Bethphage's response and corrective action plan(s) related to any issues raised by the IRO(s);
7. a summary of Material Deficiencies (as defined in III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Material Deficiencies;
8. a report of the aggregate overpayments that have been returned to the Federal health care programs. Overpayment amounts should be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;
9. a summary of the disclosures in the confidential disclosure log required by section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;
10. a description of any personnel actions (other than hiring) taken by Bethphage as a result of the obligations in section III.F, and the name, title, and responsibilities of any person that falls within the ambit of section III.F.4, and the actions taken in response to the obligations set forth in that section;
11. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;
12. a description of all changes to the most recently provided list (as updated) of Bethphage's locations (including locations and mailing addresses) as required by section V.A.10, the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider

identification number(s), and the contractor name and address that issued each provider identification number; and

13. the certification required by section V.C.

The first Annual Report shall be received by the OIG no later than one year and 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that: (1) except as otherwise described in the applicable report, Bethphage is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

D. Designation of Information: Bethphage shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Bethphage shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

## **VI. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated in writing after the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:

Civil Recoveries Branch - Compliance Unit  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
Cohen Building, Room 5527  
330 Independence Avenue, SW  
Washington, DC 20201  
Phone 202.619.2078  
Fax 202.205.0604

Bethphage:

Cynthia Schroeder  
Bethphage  
Lind Center  
980 South 118<sup>th</sup> Street - Suite A  
Omaha, NE 68137  
Ph: 402.896.3884  
Fax: 402.896.1511

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

**VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS**

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Bethphage's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Bethphage's locations for the purpose of verifying and evaluating: (a) Bethphage's compliance with the terms of this CIA; and (b) Bethphage's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Bethphage to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Bethphage's employees, contractors, or agents

who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Bethphage agrees to assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Bethphage's employees may elect to be interviewed with or without a representative of Bethphage present.

#### **VIII. DOCUMENT AND RECORD RETENTION**

Bethphage shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for 6 years (or longer if otherwise required by law).

#### **IX. DISCLOSURES**

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Bethphage prior to any release by OIG of information submitted by Bethphage pursuant to its obligations under this CIA and identified upon submission by Bethphage as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Bethphage shall have the rights set forth at 45 C.F.R. § 5.65(d). Bethphage shall refrain from identifying any information as exempt from release if that information does not meet the criteria for exemption from disclosure under FOIA.

#### **X. BREACH AND DEFAULT PROVISIONS**

Bethphage is expected to fully and timely comply with all of its CIA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Bethphage and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Bethphage fails to have in place any of the following:

- a. a Compliance Officer as described by section III.A.1;
- b. a written Code of Conduct as described by section III.B.1;
- c. written Policies and Procedures as described by section III.B.2;
- d. a requirement that Covered Persons be trained as described in section III.C; and
- f. a Confidential Disclosure Program as described in section III.E.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Bethphage fails to retain an IRO, as required in section III.D.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Bethphage fails to meet any of the deadlines for the submission of the Implementation Report or the Annual Reports to OIG.

4. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Bethphage employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, Bethphage's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (the Stipulated Penalty described in this paragraph shall not be demanded for any time period during which Bethphage can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person).

5. A Stipulated Penalty of \$1,500 for each day Bethphage fails to grant access to the information or documentation as required in section VII of this CIA. (This Stipulated Penalty shall begin to accrue on the date Bethphage fails to grant access.)

6. A Stipulated Penalty of \$1,000 for each day Bethphage fails to comply fully and adequately with any obligation of this CIA not already covered in paragraphs 1-5. In its notice to Bethphage, OIG shall state the specific grounds for its determination that Bethphage has failed to comply fully and adequately with the CIA obligation(s) at

issue and steps the Bethphage must take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after the date that OIG provides notice to Bethphage of the failure to comply.) With respect to the Stipulated Penalty provision described in this section X.A.6 only, the OIG shall not seek a Stipulated Penalty if Bethphage demonstrates to the OIG's satisfaction that the alleged failure to comply could not be cured within the 10-day period, but that: (i) Bethphage has begun to take action to cure the failure to comply, (ii) Bethphage is pursuing such action with due diligence, and (iii) Bethphage has provided to OIG a reasonable timetable for curing the failure to comply.

B. Timely Written Requests for Extensions. Bethphage may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Bethphage fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two business days after Bethphage receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter*. Upon a finding that Bethphage has failed to comply with any of the obligations described in section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Bethphage of: (a) Bethphage's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

2. *Response to Demand Letter*. Within 10 days of the receipt of the Demand Letter, Bethphage shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.E. In the event Bethphage elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Bethphage cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the

(b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Bethphage shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Bethphage is in full compliance with this CIA;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Bethphage has begun to take action to cure the material breach; (ii) Bethphage is pursuing such action with due diligence; and (iii) Bethphage has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If at the conclusion of the 30-day period, Bethphage fails to satisfy the requirements of section X.D.3, OIG may exclude Bethphage from participation in the Federal health care programs. OIG will notify Bethphage in writing of its determination to exclude Bethphage (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.E, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Bethphage wishes to apply for reinstatement, Bethphage must submit a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

#### E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Bethphage of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Bethphage shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an

Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as set forth in section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Bethphage has materially breached this CIA, which decision shall be made at OIG's discretion and shall be governed by the provisions in section X.D, below.

D. Exclusion for Material Breach of this CIA

1. *Definition of Material Breach.* A material breach of this CIA means:

- a. a failure by Bethphage to report a material deficiency, take corrective action and make the appropriate refunds, as required in section III.H;
- b. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section X.C; or
- d. a failure to retain and use an Independent Review Organization in accordance with section III.D.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Bethphage constitutes an independent basis for Bethphage's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Bethphage has materially breached this CIA and that exclusion should be imposed, OIG shall notify Bethphage of: (a) Bethphage's material breach; and



appeal, the Departmental Appeals Board (“DAB”), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days of the receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days of receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Bethphage was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; (b) the period of noncompliance and (c) with respect to a stipulated penalty authorized under section X.A.6 only, whether the failure to comply could not be cured within the 10-day period, but that by the end of that period (i) Bethphage had begun to take action to cure the failure to comply, (ii) Bethphage was and is pursuing such action with due diligence, and (iii) Bethphage had provided to OIG a reasonable timetable for curing the material breach which is being followed. Bethphage shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders Bethphage to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Bethphage requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be:

- a. whether Bethphage was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30 day period, but that:

- (i) Bethphage had begun to take action to cure the material breach within that period;
- (ii) Bethphage has pursued and is pursuing such action with due diligence; and
- (iii) Bethphage provided to OIG within that period a reasonable timetable for curing the material breach and Bethphage has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for the Bethphage, only after a DAB decision in favor of OIG. Bethphage's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Bethphage upon the issuance of an ALJ's decision in favor of the OIG. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Bethphage may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA.

#### **XI. EFFECTIVE AND BINDING AGREEMENT**

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Bethphage and OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns, and transferees of Bethphage;
- B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned Bethphage signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

**ON BEHALF OF BETHPHAGE**

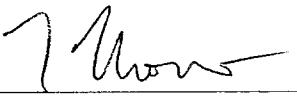
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DAVID A. JACOX  
President  
Bethphage

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DATE

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EDWARD G. WARIN  
McGrath, North, Mullin & Kratz, P.C.  
Counsel to Bethphage

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DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

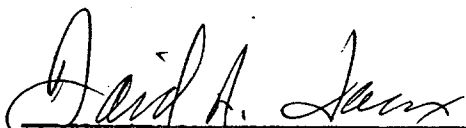
  
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LEWIS MORRIS  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U. S. Department of Health and Human Services

5/12/01  
\_\_\_\_\_  
DATE

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned Bethphage signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

**ON BEHALF OF BETHPHAGE**



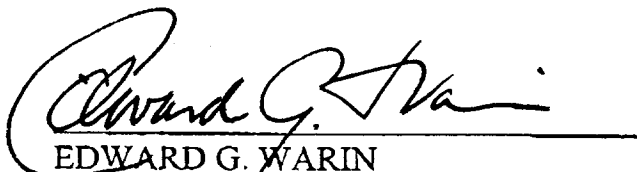
DAVID A. JACOX

President

Bethphage

5-12-00

DATE



EDWARD G. WARIN

McGrath, North, Mullin & Kratz, P.C.

Counsel to Bethphage

5-12-00

DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

\_\_\_\_\_  
LEWIS MORRIS

Assistant Inspector General for Legal Affairs

Office of Inspector General

U. S. Department of Health and Human Services

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DATE